

Introduced by: Councilmember Snipper

First Reading: May 21, 2007

Second Reading: May 29, 2007

Effective Date: May 29, 2007

**CITY OF TAKOMA PARK, MARYLAND
ORDINANCE NO. 2007-28**

Elimination of Individual Financing Arrangements as a Factor in Rent Increase Awards

WHEREAS, section 6.20.060.C.8 of the *Takoma Park Code* provides that, in calculating the amount of a hardship rent increase, the Commission on Landlord-Tenant Affairs is to adjust the base year net operating income for the inflation that occurred from the base year to the petition year; and

WHEREAS, for landlords who have not paid mortgage expenses between the base year and the petition year, the *Code* requires that the base year net operating income be adjusted by 50% of the general inflation rate, and, for landlords that have paid mortgage expenses, the base year net operating income is to be adjusted by 100% of the general inflation rate; and

WHEREAS, the rationale for allowing net operating income to increase at 50% of the inflation rate is that it should result in rent increases approximately equivalent to the historic average annual market rent increase and the City's annual rent stabilization allowance, which is 70% of the inflation rate; and

WHEREAS, the rationale for allowing net operating income to increase by 100% of the inflation rate for landlords without mortgage expenses is that increases in net operating income have a much smaller effect upon the cash flow of such landlords; and

WHEREAS, although the City has never received a Hardship Rent Increase Petition from a property owner that did not have a mortgage, the City recently has been advised that courts reviewing rent control statutes in California and New Jersey have found that the practice of allowing different rent increases for properties because of the financing arrangements of the landlords does results in arbitrary rent increases because a landlord's financing arrangements are not relevant to the value of the tenancy; and

WHEREAS, a landlord has taken issue with the favorable treatment that the *Code* provides to landlords without mortgages under the hardship rent increase petition process; and

WHEREAS, adjusting the base year net operating income by 50% of the inflation rate to calculate hardship rent increases is consistent with the City's current policy of allowing annual rent increases equal to 70% of the inflation rate, while adjusting the base year net operating income by 100% of the inflation rate is inconsistent with that policy; and

WHEREAS, the City wishes to ensure that its rent stabilization scheme does not result in arbitrary rent increases for tenants of properties where the landlord does not have a mortgage and does not place landlords that have mortgages at a competitive disadvantage;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND:

SECTION 1. Title 6, Housing, of the *Takoma Park Code* shall be amended as follows:

Sec. 6.20.060 Rent increase petitions.

A. Definitions. In addition to the definitions set forth in Chapter 6.04, the following words and phrases shall have the following meanings:

~~"Actual and reasonable interest" means the annual percentage rate (APR) based on compounding interest methods using a constant annual interest rate percentage and a monthly payment schedule over the amortization period.~~

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C. Rent Increases Pursuant to a Hardship Petition.

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8. After the Commission's adjustments to the landlord's original figures listed on the petition, the Commission shall calculate the landlord's base year net operating income by subtracting all allowable expenses approved for the base year from the landlord's income during the base year. The Commission shall then make an upward adjustment of the base year net operating income by 50% of the Consumer Price Index in order to calculate the allowable petition year net operating income. If the landlord's petition year documentation shows that the petition year net operating income is less than the adjusted base year net operating income, the Commission shall allow rents to be adjusted upwards to result in a net operating income equal to the adjusted base year net operating income. ~~Landlords who have paid no mortgage expenses from the base year to the petition year shall receive an upward adjustment of the base year net operating income by 100% of the Consumer Price Index.~~

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D. Petitions for Rent Increases for Capital Improvements.

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6. Cost of Financing. The cost of financing a capital improvement shall be the ~~actual and reasonable amount of interest and other charges paid to the lender in~~

~~connection with a loan taken to finance the capital improvement. The "actual and reasonable amount of interest" shall mean the interest the landlord would pay on a loan to finance the capital improvement with an annual percentage rate equal to the imputed interest rate set forth in subsection 7 annual percentage rate (APR) based on compounding interest methods using a constant annual percentage rate and with a uniform monthly payment schedule over the amortization period.~~

7. ~~Imputed Financing Interest Rate.~~ The interest rate to be used to calculate the cost of financing a capital improvement shall be ~~If a landlord has financed the capital improvement with her or his own funds, the cost of financing shall be deemed to be the amount of financing costs the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, at an interest rate equal to the prime rate in effect at the time of construction or installation of the capital improvement plus 2% per annum.~~

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11. The following information shall be included in the petition for a rent increase pursuant to capital improvements:

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~~c. If the landlord has acquired a loan to pay for the capital improvements, copies of loan agreements showing the interest payable on the loan and the amount paid by the date of the petition, if any;~~
~~d. c.~~ If the landlord has spent his or her own labor installing or maintaining the improvements, a list of times spent and amounts billed for the labor.

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~~E. Petitions for Rent Increases Due to Refinancing Costs or Interest Rate Changes:~~

~~1. Cost of Refinancing. Landlords shall be permitted to include in a rent increase petition the cost of refinancing a loan secured by the rental facility when the refinancing a loan secured by the rental facility when the refinancing is required due to the terms and conditions of the original loan or due to business necessity outside of the control of the owner(s). The cost of refinancing shall be amortized over the life of the new loan and included in a hardship petition pursuant to subsection (C) of this section.~~

~~a. The cost of refinancing shall include loan fees, document preparation fees and recording fees.~~

~~b. Landlords shall not be permitted to include in a rent increase petition the cost of refinancing a loan secured by the rental facility when the~~

principal amount of the loan has increased, except where the increase in principal is due to the refinancing costs:

~~c. Landlords shall not be permitted to include in a rent increase petition the cost of refinancing a loan secured by the rental facility when the total of the principal, refinancing costs, other loan costs and interest payable over the life of the new loan is less than the total of the principal, loan costs and interest that would have been payable over the remaining life of the former loan:~~

~~d. A petition for a rent increase under subsection (E)(1) of this section shall be filed with the Commission within one year after the date on which the mortgage facility is refinanced:~~

2. ~~Interest Rate Increases.~~ If a landlord demonstrates that the interest rate on a loan secured by the rental facility has increased by 3 or more percentage points from the base year to the petition year, the landlord may include the interest expense on a hardship petition:

~~a. The portion of rent increases granted under this section shall be known as "rent surcharges" and shall be adjusted pursuant to changes in the interest rate on a mortgage secured by the rental facility:~~

~~b. The Commission shall not grant a rent surcharge due to an increase in the principal amount of the loan:~~

~~c. Rent surcharges granted under this section shall not form the basis of calculating maximum allowable rent, and rent increases granted under subsection (C), (D) or (E)(1) of this section and allowable under Section 6.20.020, rent stabilization allowance, shall be taken on the maximum allowable rent only:~~

~~d. Any rent surcharge granted under this section due to an increase in the interest rate on a loan secured by the rental facility shall be for the period of the loan interest rate adjustment, but not less than one year, and shall be adjusted pursuant to the period of the loan interest rate adjustment, but not less than one year, when the landlord demonstrates that the interest rate on the loan has not decreased to less than 3 percentage points above the interest rate paid on the loan during the base year. The rent surcharge shall be adjusted as follows:~~

~~i. If the interest rate remains within one percentage point of the interest rate in the petition year, the landlord may continue to charge the rent surcharge:~~

~~ii. If the interest rate on a loan secured by the rental facility decreases by one percentage point or more from the interest rate in effect during the petition year, the maximum allowable rents at the rental facility shall be maintained, and no rent increases shall be granted under this section or allowable under Section 6.20.020 shall be taken until the amount of the rent surcharge attributable to the interest rate decrease has been offset:~~

~~iii. If the interest rate again rises by more than one percentage point after an offset has been in effect pursuant to subsection~~

~~(E)(2)(d)(ii) of this section the rent surcharge shall be adjusted upward accordingly by the amount attributable to the interest rate change. However, if the interest rate rises beyond the interest rate in the petition year, no further extraordinary rent surcharges may be taken unless the landlord files an additional hardship petition.~~

~~iv. If the interest rate on a loan secured by the rental facility decreases to less than 3 percentage points above the interest rate paid on the loan during the base year, the maximum allowable rents at the rental facility shall be maintained and no rent increases shall be taken until all rent surcharges taken under this section have been offset. No further upward adjustments shall be made after the interest rate on the loan decreases to less than 3 percentage points above the interest rate paid during the base year unless the landlord files a subsequent hardship petition.~~

~~e. If the interest rate on the loan in the base year is computed using a different formula or method than is used to compute the interest rate in the petition year, the interest rate in the base year shall be recomputed using the same formula used to calculate the interest rate in the petition year. The recomputed interest rate shall be used to calculate the interest expense in the base year.~~

~~f. Notwithstanding the base year that has been established to calculate a hardship petition for the rental facility pursuant to subsection (C) of this section, the base year for the purposes of calculating a rent surcharge due to interest rate increases from the base year to the petition year shall be 1990 or the year the landlord acquired the rental facility, whichever is later.~~

SECTION 2. This Ordinance shall be effective immediately.

Adopted this 29th day of May, 2007, by roll-call vote as follows:

Aye:	Porter, Barry, Clay, Seamens, Snipper, Williams
Nay:	None
Absent:	Austin-Lane
Abstain:	None

Note: Omitted text is indicated by asterisks. Deleted text is indicated by strikeout.

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